SKD Jonesville Division L.P. *and* Pamela J. Cole. Case 7–CA–42244

September 10, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On March 24, 2000, Administrative Law Judge Arthur J. Amchan issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed a brief in response to the General Counsel's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Decision and Order.

The complaint alleges that the Respondent violated Section 8(a)(1) of the Act by interrogating Pamela Cole about her union activities, threatening her with unspecified reprisals if she engaged in such activities, and creating an impression that her union activities were under surveillance. The complaint further alleges that the Respondent violated Section 8(a)(1) by warning Cole not to speak to other employees about work-related subjects, threatening her with discipline and discharge if she failed to heed that warning, and placing her on probation. The judge recommended that the complaint be dismissed in its entirety. In his exceptions, the General Counsel argues that the Board should find all of the violations.

For the reasons discussed below, we agree with the General Counsel that the Respondent violated Section 8(a)(1) by threatening Cole with unspecified retaliation if she engaged in union activities and by warning her in writing not to speak to her fellow workers about work-related matters, on pain of discipline or discharge. However, we agree with the judge that the Respondent did not violate the Act in any other respect.[2]

1. Kevin Varney's statements to Cole

As the judge found, Cole worked for the Respondent from March 1994 until August 1999. In 1995, she was openly and actively involved in an unsuccessful organizing campaign for the United Auto Workers. There is no evidence that the Respondent committed any unfair labor practices related to the 1995 campaign.

In early 1999,[3] a number of employees asked Cole to contact the UAW to begin another organizing effort. In mid-February, Kevin Varney, Cole's supervisor, called her into his office. Jeff Hamilton, another rank and file employee, was also in the office. Cole testified, without rebuttal, as follows:

> Varney said he heard that I was going to organize . . . that the employees wanted me to organize a union and I told him no, I wasn't getting involved, and then they were talking, him and Jeff Hamilton . . . about people on Workmen's Comp, that they were low life losers and . . . Jeff Hamilton said that . . . Varney should fire them all and Varney said he would if he could, and then he told me that it wasn't in my best interests to be getting involved with the union.

The General Counsel contends that, by making those statements, Varney unlawfully interrogated Cole about her union activities, threatened to retaliate against her for engaging in such activities, and gave the impression that her protected activities were under surveillance. The judge rejected each of those contentions.

Contrary to the judge, we find that Varney unlawfully threatened Cole with retaliation if she took part in union organizing activities. Thus, Varney told Cole that "it wasn't in [her] best interests to be getting involved with the union." Unlike the judge, we find no indication in that statement that Varney was merely giving an opinion that the Respondent's employees did not need a union. The statement was made following a reference to discharging other workers who had exercised their legal rights. It was not phrased as an opinion by merely suggesting that the employees would not benefit from a union; rather, it strongly implied that Cole, personally, would be worse off if she was "involved" with a union. Thus, Cole would reasonably have interpreted Varney's remark as a threat that the Respondent would retaliate against her in some unspecified way if she was involved with the union.

[1] The General Counsel has implicitly excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] As explained in her separate opinion, Member Liebman would also find that the Respondent unlawfully interrogated Cole and created the impression that her union activities were under surveillance.

[3] Henceforth, all dates refer to 1999 unless otherwise stated.

The Board has found similar nonspecific threats to violate Section 8(a)(1). Thus, in *Keller Ford*, 336 NLRB 722 (2001), enfd. 69 Fed. Appx. 672 (6th Cir. 2003), a supervisor unlawfully advised an employee not to talk to other employees about insurance copayments, because it could be "hazardous to [his] health." In *Long Island College Hospital*, 327 NLRB 944, 945 (1999), a supervisor unlawfully told employees to proceed with caution in taking a work related issue to the union, because one of the employees was getting an unfavorable reputation with management. Consistent with those decisions, we find that Varney's threat of unspecified reprisals violated Section 8(a)(1).

However, we affirm the judge's finding that Varney's statements did not constitute unlawful interrogation. At the outset, we do not believe that there was an interrogation at all. Unlike our colleague, we do not agree that Varney's *statement* (regarding what he had heard about Cole's union activity) was an unlawful *question* about whether Cole was prounion. Indeed, as noted above, Cole was an open adherent of the Union. In addition, contrary to our colleague, the evidence does not establish that Varney *intended* a question.

Further, even if Varney's remark was a question, we do not believe that it was a coercive interrogation. As the judge stated, the test for whether an interrogation violates Section 8(a)(1) is whether, under all the circumstances, it reasonably tends to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. *Rossmore House*, 269 NLRB 1176, 1177 (1984), enfd. sub nom. *Hotel & Restaurant Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985); *Sunnyvale Medical Clinic*, 277 NLRB 1217, 1218 (1985). Among the factors to be considered are the background of the questioning, the nature of the information sought, the identity of the interrogator, and the place and method of the questioning. *Rossmore House*, 269 NLRB at 1178, fn. 20.

Applying that standard, we find that Varney did not unlawfully interrogate Cole. Thus, as the judge found, Cole had been an open union supporter during the 1995 campaign, and management could reasonably have believed that she would favor the union again. Varney was a low level supervisor, and there is no evidence that he or any other supervisor questioned Cole or any other employee about union activities. Nor is there any indication that the Respondent committed any unfair labor practices during the 1995 organizing effort. Although Varney spoke to Cole in his office, his relatively low rank greatly reduces any coercive effect the statement might have had it been made by, for example, the plant manager in his office.

Because the Respondent unlawfully threatened Cole with unspecified reprisals if she engaged in union activities, and, as we find below, later unlawfully warned Cole against talking to other employees about work-related issues, we recognize that Varney's "interrogation" of Cole did not take place in an atmosphere entirely free of unlawful conduct. On balance, however, we do not find that those unfair labor practices render Varney's interrogation unlawful. Varney's threat was nonspecific, and in evaluating its seriousness, Cole must have been aware that the Respondent did not act unlawfully in response to the 1995 union organizing effort. As for the warning, it was issued more than 2 months after Varney's conversation with Cole and was not specifically related to her union activities, but rather to her right to discuss work-related matters with her fellow employees.

We agree with the judge, for the reasons stated in his decision, that Varney's statements did not create an impression of surveillance. As the judge correctly observed, Varney's statement—"he heard that I was going to organize . . . that the employees wanted me to organize a union"—could not have been reasonably understood to mean that Varney was monitoring employee conversations or somehow eavesdropping. A statement as to what someone has heard could be based on (1) what he had heard from the grapevine *or* (2) what he had picked up from spying. There is no reason to infer the latter as the source over the former. And, particularly in the instant case, where Cole had been an open union supporter, there is even less basis to suggest to Cole that Varney had been spying on her union activity. Accordingly, we do not agree that the Respondent created an impression of surveillance.

The instant case is readily distinguishable from *Mountaineer Steel*, 326 NLRB 787 (1998), enfd. 8 Fed. Appx. 180 (4th Cir. 2001) In that case, a union supporter was talking about the union with other employees when the foreman walked around the corner and said, "I thought you was a union radical and now I know you are." Contrary to our colleague, the Board decision makes it clear that the two parts of the sentence constituted the violation. In the instant case, there is nothing comparable to the second part of that sentence.[4]

2. The written warning to Cole

In late April, the Respondent issued a written warning to Cole. As fully discussed by the judge, the warning

[4] As discussed above, Varney's statement was a threat of retaliation. Our colleague has parsed the statement so finely as to glean *three* violations from it. As noted, we find one violation. Our colleague's approach suggests the kind of "piling on" that Chairman Hurtgen spoke about in his dissent in *TPA*, 337 NLRB No. 40 (2001). However, we need not, and do not, reach that issue here.

was precipitated by comments Cole made during and after an employee meeting on April 27, regarding asserted harassment at work. On April 30, supervisors Rick Sudds and Willie Tabb met with Cole and gave her the warning. The document began with a lengthy discussion of Cole's demeanor and attitude, including her actions on April 27, which management evidently found unacceptable. The document also describes the following "inappropriate business behavior and responses" by Cole:

> 1. Employee responds to every situation she deems unfavorable with a response of harassment towards all parties involved;
>
> 2. The employee consistently discusses work-related problems with co-workers instead of their proper party, i.e., the manager or member of management;
>
> 3. Interfacing with other employees, supervisors, and senior management is most always in an inappropriate manner and usually uses an attitude inconsistent with mutual respect.

Under "corrective actions required," the document states, among other things, that "[a]ll work related problems are to be discussed with the Supervisor. There are no exceptions to this corrective action." The document concludes with the warning: "Any further activity that results in a counter-productive work situation will be dealt with in the form of disciplinary action, up to and including discharge of employment."

We find that the warning violated Section 8(a)(1), because it unlawfully prohibited Cole from discussing work-related matters with other employees. It is well established that Section 7 protects employees' right to discuss such matters with each other. See, e.g., *Keller Ford*, supra. Accordingly, a blanket prohibition on such discussions violates Section 8(a)(1). See, e.g., *Hilton's Environmental*, 320 NLRB 437 fn. 2, 454 (1995).

In our view, Cole would reasonably have interpreted the passage quoted above as a warning not to attempt to discuss any work-related issues with her co-workers, and as a threat that she would be disciplined or even fired if she did so. As such, the warning was unlawfully coercive, especially in view of Varney's earlier statement that it was not in Cole's best interest to be involved with the union. We therefore find that the Respondent violated Section 8(a)(1) by issuing the written warning and threatening Cole with discipline or discharge if she engaged in protected conduct.[5]

The judge dismissed this allegation, however, because he found that the warning had to be read in the context in which it was given. Noting that Cole had raised issues of concern only to herself and not of interest to other employees, he found that the warning was not unlawful.

We disagree. The Board has specifically held that the unlawful character of an overly broad rule of this kind does not depend on whether it is promulgated in response to an employee's protected concerted activities. Thus, in *Keller Ford*, the administrative law judge recommended dismissing the complaint allegation that the employer had unlawfully threatened an employee with unspecified reprisals for talking to other employees about insurance copayments, because the employee was acting solely in his own interest and was not seeking group action. The Board reversed, holding that such a broad prohibition against discussing terms and conditions of employment with other employees violated Section 8(a)(1) regardless of whether the employee who was the target of the prohibition was actually engaged in protected concerted activities. 336 NLRB at 722. See also *K Mart Corp.*, 297 NLRB 80 fn. 2 (1989). The Respondent's warning thus was unlawful, even though it was precipitated by Cole's actions that were arguably on her own behalf.

In finding this violation, we do not mean to imply that employers may not have, and enforce, rules against inappropriate employee behavior or which seek to foster a harmonious working environment. Nor do we suggest that employers may not require employees to discuss work-related problems with management in an attempt to reach a solution. We simply hold, as the Board has repeatedly done, that employers may not forbid employees to talk about work-related issues with each other as well.[6]

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[5] The General Counsel has excepted to the judge's failure to find that statements allegedly made to Cole by Sudds and Tabb on April 28 violated Sec. 8(a)(1). We find no merit in that exception. The judge apparently discredited the testimony on which the General Counsel relies in support of this allegation, and in any event, a finding of such a violation would not materially affect the Order.

In his brief in support of exceptions, the General Counsel also contends that the judge erred by failing to find that Sudds violated Sec. 8(a)(1) by placing Cole on probation on April 29. We reject that contention, which was not among the General Counsel's exceptions. See *Ichikoh Mfg.*, 312 NLRB 1022 (1993), enfd. mem. 41 F.3d 1507 (6th Cir. 1994); Board's Rules and Regulations, Sec. 102.46(b)(2), (c).

[6] We find this case distinguishable from *Aroostook County Regional Ophthalmology Center v. NLRB*, 81 F.3d 209 (D.C. Cir. 1996). There, the court of appeals found that the employer lawfully maintained rules stating that "All grievances are to be discussed in private with the office manager or physicians. It is totally unacceptable for an employee to discuss any grievances within earshot of patients." Id. at 211. The court held that the rule against discussing grievances in the presence of patients was consistent with Supreme Court precedent (see *Beth Israel Hospital v. NLRB*, 437 U.S. 483, 505 (1978); *NLRB v. Baptist Hospital, Inc.*, 442 U.S. 773, 784–786 (1979)), and that the rule requiring employees to discuss their grievances in private with management was designed merely to provide a fair and reasonable employment dispute resolution mechanism. Id. at 213–214. Neither rule suggested to the court that employees were forbidden to discuss work-related grievances

ORDER

The National Labor Relations Board orders that the Respondent, SKD Jonesville Division, L.P., Jonesville, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with unspecified reprisals if they engage in union activities.

(b) Warning employees not to talk to other employees concerning work-related problems, and threatening them with discipline up to and including discharge if they do not comply.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, remove from its files any reference to the unlawful warning of Pamela Cole, and within 3 days thereafter notify her in writing that this has been done and that the warning will not be used against her in any way.

(b) Within 14 days after service by the Region, post at its facility at Jonesville, Michigan, copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 14, 1999.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 10, 2003

Robert J. Battista, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER LIEBMAN, dissenting in part.

I agree that the Respondent violated Section 8(a)(1) of the Act by threatening Pamela Cole with unspecified reprisals if she took part in union activities and by warning her in writing not to talk to other employees about work-related matters and threatening her with discipline or discharge if she did so. Unlike my colleagues and the judge, I would also find that Cole's supervisor, Kevin Varney, unlawfully interrogated Cole and gave the impression that her union activities were under surveillance.

1. Impression of surveillance

As stated in the majority opinion, Varney called Cole into his office in mid-February 1999, not long after a union organizing campaign had begun among the Respondent's employees. Varney told Cole that "he heard that I was going to organize . . . that the employees wanted me to organize a union[.]" The complaint alleges that Varney's statement unlawfully created an impression of surveillance.

As the judge noted, the test for whether an employer's statement creates an impression of surveillance is whether the employee would reasonably assume from the statement that her union activities were under surveillance. *United Charter Service*, 306 NLRB 150 (1992). In my view, Cole would reasonably have assumed from Varney's statement that he had heard that the employees wanted Cole to organize a union. There is no showing (and no contention) that Varney had a legitimate purpose for making his statement. The coercive nature of the statement was made even more apparent by Varney's unlawful threat, in the same conversation, to retaliate against Cole if she engaged in union activities.

The Board has found that similar statements created an impression of surveillance. In *Mountaineer Steel, Inc.*, 326 NLRB 787 (1998), enfd. 8 Fed. Appx. 180 (4th Cir. 2001), a union supporter was talking about the union

with each other under any circumstances, especially because the employer affirmatively encouraged discussions among employees that did not include physicians or managers. Id. Here, by contrast, the Respondent explicitly stated that Cole's "inappropriate business behavior" included "discuss[ing] work-related problems with co-workers *instead of their proper party, i.e. the manager or a member of management*." (Emphasis added.) That statement strongly implies that co-workers were not "proper parties" with whom Cole was allowed to discuss work-related issues.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

with other employees when the foreman walked around the corner and said, "I thought you was a union radical and now I know you are." The Board found that the first part of the statement ("I thought you was a union radical") reasonably suggested that the foreman had spent some time in the past closely monitoring the employee's union activities.[1]

In finding no violation here, the judge reasoned that, from Varney's statement, one could conclude that someone opposed to the Union voluntarily informed him about Cole's activities. The Board, however, has rejected that reasoning, and so do I. The reason is simple: in evaluating whether an employer's statement is coercive, the Board evaluates it as would a reasonable employee who depends on the employer for her livelihood. As the Supreme Court has held,

> [A]ny balancing of [employees' Section 7 rights and employers' right to express their views] must take into account the economic dependence of the employees on their employers, and the necessary tendency of the former, because of that relationship, to pick up intended implications of the latter that might be more readily dismissed by a more disinterested ear.

NLRB v. Gissel Packing Co., 395 U.S. 575, 617 (1969). The test, therefore, is not whether some reasonable third party might infer an innocent explanation for Varney's statement, but whether a reasonable employee in Cole's position could interpret it as indicating that her conduct was under surveillance. Thus, as stated in *Mountaineer Steel*, "the Board does not require that an employer's words on their face reveal that the employer acquired its knowledge of the employee's activities by unlawful means." 326 NLRB at 787, quoting *United Charter Service*, 306 NLRB at 151.

In finding the violation in *Mountaineer Steel*, the Board also found that no innocent explanation for the foreman's statement was communicated to the employee. 326 NLRB at 787 fn. 4; see also *United Charter Service*, 306 NLRB at 151. Here, too, no legitimate purpose was given for Varney's remarks. For all these reasons, then, I would find that Varney's statement reasonably suggested to Cole that her union activities were under surveillance, and therefore that they violated Section 8(a)(1).

[1] The judge distinguished *Mountaineer Steel* because the "and now I know you are" part of the foreman's statement would have led the employee to believe that the foreman was eavesdropping. While there is no suggestion of eavesdropping in this case, Varney's remark that he heard that the employees had asked Cole to organize a union was similar to the remainder of the foreman's comment in *Mountaineer Steel* ("I thought you was a union radical"), and likewise gave the impression that Cole's union activities had been monitored.

2. Unlawful interrogation

I would also find that Varney unlawfully interrogated Cole by stating that he had heard that the employees had asked her to organize a union. An interrogation violates Section 8(a)(1) if, under all the circumstances, it reasonably tends to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. *Rossmore House*, 269 NLRB 1176, 1177 (1984), enfd. sub nom. *Hotel and Restaurant Employees Local v. NLRB*, 760 F.2d 1006 (9th Cir. 1985); *Sunnyvale Medical Clinic*, 277 NLRB 1217, 1218 (1985). The factors to be considered include the background of the questioning, the nature of the information sought, the identity of the interrogator, and the place and method of the questioning. *Rossmore House*, 269 NLRB at 1178, fn. 20.

Applying that standard, I find that Varney's comment restrained and coerced Cole in violation of Section 8(a)(1). Thus, Cole was summoned to Varney's office, for no apparent reason, and abruptly confronted with the statement that Varney had heard that the employees had asked her to organize a union. Varney did not give Cole a choice as to whether to engage in this colloquy or assure her that reprisals would not follow her response. *Yoshi's Japanese Restaurant & Jazz House*, 330 NLRB 1339, 1342 (2000). Indeed, in the same conversation, Varney violated Section 8(a)(1) by threatening Cole with unspecified reprisals if she was involved with union organizing. In addition, Cole was unlawfully warned, in a separate incident, not even to talk to other employees about work-related concerns. These other unfair labor practices reinforce the coercive nature of Varney's interrogation.

Thus, Cole was interrogated about her union organizing activities, in her supervisor's office, and against a background of other unfair labor practices.[2] Varney gave no legitimate reason (or any reason) for the interrogation, and he gave her no assurance against retaliation. That Varney was a low-level supervisor may reduce somewhat the coercive character of his remarks, but not enough to make them lawful. Although Cole had been an open union adherent during the 1995 organizing campaign, there is no showing that she actively or openly supported the union in 1999. Under all of the circum-

[2] I find my colleagues' attempt to minimize the impact of the Respondent's unlawful conduct unpersuasive, especially since Varney threatened Cole with reprisals for engaging in union activities almost immediately after interrogating her about those activities. Also, contrary to the majority, I find it irrelevant that Varney's comment was not phrased as a question, because it was clearly intended to, and did, elicit information from Cole about her union activities. See *Clinton Electronics Corp.*, 332 NLRB 479, 479–480 (2000).

stances, I would find that Varney's interrogation of Cole violated Section 8(a)(1).

For all of the foregoing reasons, I would reverse the judge and find that the Respondent violated Section 8(a)(1) by interrogating Cole and by creating the impression that her protected conduct was under surveillance.[3] I therefore respectfully dissent from my colleagues' dismissal of those allegations.

Dated, Washington, D.C. September 10, 2003

Wilma B. Liebman, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten employees with unspecified reprisals if they engage in union activities.

WE WILL NOT warn employees not to talk to other employees concerning work-related problems, and threaten them with discipline up to and including discharge if they do not comply.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the National Labor Relations Act.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful warning of Pamela Cole, and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the warning will not be used against her in any way.

SKD JONESVILLE DIVISION, L.P.

Richard F. Czubaj, Esq., for the General Counsel.
Susan T. Rapp, Esq. (Abbott, Nicholson, Quilter, Esshaki & Youngblood, P.C.), of Detroit, Michigan, for the Respondent.

DECISION

STATEMENT OF THE CASE

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Hillsdale, Michigan, on February 9, 2000. The charge was filed July 23, 1999, and the complaint was issued November 19, 1999.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation, engages in welding and metal stamping at its facility in Jonesville, Michigan, where it annually purchases and receives goods valued in excess of $50,0000 directly from points outside the State of Michigan. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The Charging Party, Pamela Cole, worked for Respondent from March 1994, until August 1999. In 1995, Cole was actively, and apparently openly, involved in an attempt by the United Autoworkers Union (UAW) to organize Respondent's plant. The Union lost an NLRB representation election that year.

In the fall of 1998, Cole accused two men at Respondent's plant of sexually harassing her. She filed a unfair labor practice related to her allegations which was withdrawn. Respondent conducted an internal investigation which resulted in the issuance of a written warning to one rank-and-file employee. Respondent did not take disciplinary action against one of its supervisors, who denied Cole's allegations. SKD concluded that in the absence of witnesses, it could not conclude that sexual harassment had occurred. The supervisor was verbally counseled and provided with a copy of the Company's harassment policy.

[3] Despite my colleagues' apparent skepticism of the approach, the Board has often found more than one violation growing out of statements made in the same conversation. See, e.g., *Boydston Electric*, 331 NLRB 1450 (2000) (threats of reprisal and coercive interrogation); *Sivalls, Inc.*, 307 NLRB 986, 1001 (1992) (interrogation and implication that support of union was futile; implication of futility and threat of discharge); *Willamette Industries*, 306 NLRB 1010 fn. 2 (1992) (interrogation and implication that employer would act to deprive union of its supporters); *Action Auto Stores*, 298 NLRB 875, 887 (1990), enfd. mem. 951 F.2d 349 (6th Cir. 1991) (interrogation, threat of discharge, threat of plant closure). Indeed, the Board has explicitly rejected the view of former Chairman Hurtgen that it should avoid, as "piling on," finding separate and distinct violations in such circumstances. *The TPA, Inc.*, 337 NLRB No. 40 (2001). The majority leaves revisiting that issue for another day.

Facts relating to paragraph 7(a) of the complaint

Cole testified that early in 1999 a number of employees asked her to contact the UAW to initiate another organizing drive. In mid-February 1999, Kevin Varney, then Cole's supervisor, called her into his office. Also present was, Jeff Hamilton, a rank-and-file employee. I credit the following uncontradicted testimony by Cole as to what was said:

> Varney said he heard that I was going to organize…that the employees wanted me to organize a union and I told him no, I wasn't getting involved, and then they were talking, him and Jeff Hamilton…about people on Workmen's Comp, that they were low life losers and…Jeff Hamilton said that…Varney should fire them all and Varney said he would if he could, and then he told me that it wasn't in my best interests to be getting involved with the union.

Cole said she was not getting involved with the Union and went back to work. No other supervisors talked to Cole about the Union in 1999, and Varney did so only on this one occasion.

Facts relating to paragraph 7(b) and (c), 8 and 9 of the complaint

Between late February and late April 1999, Pamela Cole had a number of ongoing disagreements with her supervisor, Willie Tabb, Respondent's quality control manager. One of these disputes involved a decision by Tabb to designate the area in which Cole's desk was located as part of a no-smoking area. Cole, who wished to continue smoking at her desk, believed that Tabb was singling her out and harassing her. She may also have argued with Tabb about additional assignments she was being given.

On April 27, 1999, Pat Giampolo, the human resources director of Respondent's parent company, National Material Corporation, came to the SKD Jonesville plant to conduct an orientation session concerning Respondent's new employee handbook. The orientation session, which began at 6 a.m., was scheduled for 1 hour at the beginning of Respondent's first shift.

Giampolo came to meeting with approximately 90 slides which he showed employees during his lecture. The first slide outlined the agenda for the meeting which was attended by approximately 70 to 80 people, including rank-and-file employees and managers. He asked the employees to hold their questions until the end of his presentation. He then proceeded to go through the handbook section by section.

When Giampolo got to the portion of the handbook dealing with Respondent's harassment policy, Cole, who was sitting in the first row, made a comment in a voice loud enough for Giampolo to hear her. She said that she had been harassed and nobody did anything about it. Giampolo told her that he would talk to her about this after the meeting. Cole made at least one other audible comment, to the effect that her supervisor was harassing her.

There was a short question and answer session after Giampolo concluded his remarks. Then employees came to the front of the room to receive copies of the employee handbook from the plant human resources manager, Rick Sudds, and sign for them. While Sudds distributed the handbooks at one end of a table, several employees approached Giampolo and SKD president, Dennis Berry, who were standing at the other end of the table.

With four to five other employees, who were waiting to ask questions of Giampolo, standing behind her, Cole told Berry about her sexual harassment complaints. Referring to the supervisor against whom disciplinary action was not taken in the fall 1998, Cole told Berry that she wanted Berry to know that this individual thrust his penis in her face in an office. Referring to the employee who had received a written warning, Cole told Berry that this individual had told her he'd like to pick the flowers off her blouse.[1] She then started talking to Berry and Giampolo about her problems with Willie Tabb.

Giampolo told Cole that her sexual harassment allegations had been resolved and that if she had any new complaints, she should talk to Sudds. Cole left and other employees then approached Giampolo to discuss how certain items in the handbook related to their personal situations.

On April 28, Cole met with Rick Sudds. Afterwards, Sudds met with Willie Tabb and discussed Cole's assertions that Tabb was harassing her.[2] The same morning Giampolo had a conference call with Sudds and Willie Tabb. The three decided to issue Cole a written warning. This warning was presented to Cole on April 30, at a meeting attended by Cole, Sudds, and Tabb. The warning referred to Cole's conduct at the April 27 meeting with Giampolo and delineated the following examples of "inappropriate business behavior and responses:"

> 1. Employee responds to every situation she deems unfavorable with a response of harassment towards all parties involved;
>
> 2. The employee consistently discusses work-related problems with co-workers instead of their proper party, i.e. the manager or member of management;
>
> 3. Interfacing with other employees, supervisors, and senior management is most always in an inappropriate manner and usually uses an attitude inconsistent with mutual respect.

The warning required that "all work-related problems are to be discussed with the Supervisor. There are no exceptions to this corrective action." It further stated that "[a]ny further activity that results in a counter-productive work situation will be dealt with in the form of disciplinary action, up to and including discharge of employment."

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[1] On the day in question, Cole was wearing a blouse which had a floral design on it.

[2] To the extent that there are discrepancies between the testimony of Sudds and Cole regarding her meetings with management on April 28, 1999, I credit Sudds. I therefore find that she met with Sudds *and* Tabb only on April 30. I deem the differences in their testimony insignificant. The issue herein is whether the warnings issued to Cole, verbal as well as written, are to be interpreted in the context of her individual complaints, or more broadly, to forbid her from discussing with other employees matters of mutual concern.

ANALYSIS

Did Kevin Varney's questions and comments to Pamela Cole violate Section 8(a)(1)?

The General Counsel alleges that Respondent, by Kevin Varney: (1) conveyed to employees the impression that their support for, and activities on behalf of, the Union were under surveillance; (2) that Respondent coercively interrogated Cole about her union activities; and (3) threatened her with adverse consequences because of her support for, and activities on behalf of, the Union.

I conclude that the General Counsel has not established that Varney created an impression that Cole's union activities were under surveillance. The test for making this determination is whether the employee would reasonably assume from the supervisor's statement that his or her union activities had been placed under surveillance, *United Charter Service*, 306 NLRB 150 (1992). Varney said nothing that gave the impression that he or anyone else in Respondent's management was spying on Cole. From his statement, one could just as easily conclude that somebody, who was unsympathetic with the Union, voluntarily informed Varney as to Cole's activities.

In this regard, I would contrast the cases cited by the General Counsel. In *Mountainer Steel, Inc.*, 326 NLRB 787 (1998), the context of the supervisor's statement would reasonably have led the employee to believe that the supervisor was eavesdropping on his union-related conversation. This is not so in the instant case. Similarly, in *United Charter Service*, supra, the Board found, due to the detail of his comments, that the statements by the employer's operations manager, Vieira, reasonably suggested to employees that the employer was closely monitoring the degree and extent of their organizing efforts and activities. I conclude that the comment by Varney, herein, did not imply close scrutiny of employee union activities.

With regard to the remaining allegations, not every question asked or comment made by a management official about union activity violates Section 8(a)(1). One must determine whether under all the circumstances of the interrogation or comment, it reasonably tends to restrain, coerce, or interfere with rights guaranteed by the Act, *Rossmore House*, 269 NLRB 1176 (1984), affd. sub nom., *Hotel & Restaurant Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). Some of the factors to be considered with regard to interrogations are: (1) the background of the questioning; (2) the nature of the information being sought; (3) the identity of the questioner; and (4) the place and method of the interrogation. I conclude that given all the circumstances of Varney's brief and isolated conversation with Cole about union activities, the General Counsel has not established an 8(a)(1) violation.

Weighing heavily in this determination is that the interrogation was a one-time event by a low-level supervisor. Moreover, there is no evidence of other unfair labor practices or anti-union animus. I would contrast the instant case, for example, with that in *Advance Waste Systems*, 306 NLRB 1020 (1992), where a one-time interrogation by a company Vice-President, inside a moving truck, was found to be violative, in conjunction with other expressions of hostility and disapproval of union activity. Other cases distinguishable due to the background of numerous unfair labor practices are *Stoody Co.*, 320 NLRB 18 (1995) [where the questioner was also a high level supervisor] and *American Crane Corp.*, 326 NLRB 1401 (1998). Furthermore, Cole's testimony indicates that it was well-known that she supported the 1995 union campaign and that management had reason to believe that she would be favorably disposed to another campaign.

Finally, from the brief testimony in the record, I am unable to interpret Varney's observation that it would not be in Cole's best interest to become involved with the Union as a threat. The essence of Varney's remark may be no more than conveying his view that employees at Respondent's facility didn't need a union. The isolated nature of Varney's comment contrasts with those made in the cases cited by the General Counsel. In *Leather Center, Inc.*, 308 NLRB 16, 27 (1992), and *Garney Morris, Inc.*, 313 NLRB 101, 116 (1993), similar comments were found to constitute veiled threats against a backdrop of numerous other unfair labor practices. Given the absence of other expressions of anti-union animus or threats herein, I decline to infer an veiled threat of repercussions to Cole if she persisted in attempts to organize a union. I therefore dismiss paragraph 7(a) of the complaint in its entirety.

Did Respondent violate Section 8(a)(1) in disciplining Cole on April 30?

The first issue is assessing the written warning given to Pamela Cole is whether it was administered in retaliation for protected activities. Section 7 gives employees the right to engage in concerted activity for the purpose of collective bargaining or *other mutual aid or protection* . . . (emphasis added). In interpreting this provision, the Board distinguishes between an employee's activities engaged in with or on the authority of other employees (concerted) and an employee's activities engaged in solely by and on behalf of the employee herself (not concerted), *Meyers Industries (Myers II)*, 281 NLRB 882 (1986) affd. sub nom. *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988). I conclude that Cole did not engage in any activity for the aid or protection of any employee other than herself.[3] I therefore conclude that she did not engage in concerted activities that are protected by Section 7.

There remains, however, the fact that the written warning issued to Cole, on its face, forbid her from discussing any work-related problems with coworkers. The language of the warning is not limited to problems that pertain only to Cole and facially appears to prohibit her from discussing matters that may be of concern to other employees as well. I conclude that the warning must be read in the context in which it was given. Had Cole been raising issues of concern to anyone other than her-

[3] *Whittaker Corp.*, 289 NLRB 933, 934 (1988), relied upon by the General Counsel, is irrelevant to the instant case. The employee is *Whittaker* phrased his remarks as a group, not a personal, complaint. Moreover, his issue with his employer, was clearly, unlike Cole's, a matter of concern to many employees. Cole's complaints were that her sexual harassment allegations had not been resolved to her satisfaction and that her supervisor, Willie Tabb, was not treating her fairly. Her complaints had nothing to do with the wages, hours, and working conditions of other employees.

self, the warning would be a clear violation of Section 8(a)(1). However, this record indicates that Cole only raised issues that pertained to her. I therefore interpret the warning in this light and find that Respondent did not violate Section 8(a)(1) as alleged.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The complaint is dismissed.

Dated, Washington, D.C. March 24, 2000

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.